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Attorneys for Defendant
Home Depot U.S.A., Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – EASTERN DIVISION

JOHN BARDWELL, an individual,

Plaintiff,

v.

HOME DEPOT U.S.A., INC., a Delaware
corporation doing business in California;
GLADIS MELENDEZ, an individual;
TOM PENGELLY, an individual; KARA
NOTO, an individual; and Does 1 through
50, inclusive,

Defendants.

CASE NO.: 5:15-cv-01201-GHK(KKx)
*[Assigned to the Honorable George H.
King]*

~~PROPOSED~~ PROTECTIVE ORDER

Removal: June 19, 2015
Trial: Not Set

CONFIDENTIALITY ORDER

GOOD CAUSE APPEARING, the Court hereby approves the Stipulation regarding Confidentiality Order and HEREBY ORDERS THAT:

1. This action is likely to involve personnel records, medical records, trade secrets, data, and other valuable research, development, commercial, financial, strategic, and/ or proprietary information for which special protection from public disclosure and from use for any purpose other than prosecution of this action is warranted. Such confidential and proprietary materials and information consist of, among other things, confidential business of financial information, information regarding confidential business practices, or other confidential research, development, or commercial information (including information implicating privacy rights of third parties), information otherwise generally unavailable to the public, or which may be privileged or otherwise protected from disclosure under state or federal statutes, court rules, case decisions, or common law. Accordingly, to expedite the flow of information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the Parties are entitled to keep confidential, to ensure that the Parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the Parties that documents or information will not be designated as “Confidential Information” for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, it is entitled to confidentiality under the terms of this Order, and there is good cause why it should not be part of the public record of this case.

2. For purposes of this Order, “Confidential Information” means:

- 1 a) any personnel or personal information for employees of Home Depot,
- 2 its parent or subsidiaries, including any personnel database identifying
- 3 such employees;
- 4 b) any document or information designated as confidential in accordance
- 5 with paragraph 6 of this Order; and
- 6 c) any aggregation of Confidential Information.

7 The identification of an individual document or category of documents or
8 information as Confidential Information under paragraphs 2(b) or 2(c) may be
9 challenged pursuant to paragraph 11 of this Order.

10 3. For purposes of this Order, “Document” means all written, recorded, or
11 graphic material, in hard copy or electronic format, including but not limited to
12 deposition transcripts and exhibits, trial and hearing transcripts and exhibits,
13 pleadings, motions, affidavits, and briefs that may quote, summarize, or contain
14 Confidential Information.

15 4. For purposes of this Order, “Producing Party” means a party that
16 produces Confidential Information or other information in connection with this
17 litigation.

18 5. For purposes of this Order, “Recipient” means a named party in this
19 litigation (or counsel thereto and their agents) who receives Confidential
20 Information or other information in connection with the litigation.

21 6. A. The Producing Party may designate as Confidential Information any
22 information it believes to be confidential, including, without limitation:

- 23 a) non-public information about a past, present or potential employee of
- 24 Home Depot or a subsidiary, including personnel records, evaluations,
- 25 compensation levels, databases, surveys, statistical analyses, analyses
- 26 of personnel practices, or other information incorporating or
- 27 aggregating information pertaining to individuals; and
- 28

- 1 b) trade secrets or other non-public proprietary, strategic or commercial
2 information, data or research of Home Depot or one or more of its
3 subsidiaries.

4 7. To designate Confidential Information on Documents, the Producing
5 Party shall place a legend or stamp upon the Document indicating such in a way that
6 brings the designation to the attention of a reasonable examiner, or otherwise puts
7 the Recipient on reasonable notice that it contains Confidential Information. To
8 designate Confidential Information in testimony (or in exhibits referred to therein),
9 the Producing Party shall:

- 10 a) make an oral statement to that effect on the record; or
11 b) notify the Recipient in writing at any time up until twenty (20) days
12 after receipt of the transcript.

13 8. The Recipient of Confidential Information shall use that information
14 solely in connection with this litigation, and shall not disclose Confidential
15 Information to any person except:

- 16 a) named plaintiffs, in accordance with the procedures set forth in
17 paragraph 8 of this Order;
18 b) the Court and its officers (including court reporters);
19 c) counsel of record in this action and employees of counsel in this action
20 who have been actively engaged in the conduct of this litigation;
21 d) Home Depot's or its subsidiaries' or affiliates' in-house counsel;
22 e) experts or litigation consultants engaged by counsel to assist in this
23 litigation, provided that these expert witnesses or litigation consultants
24 expressly agree to be bound by the terms of this Order and not to
25 disclose Confidential Information except as permitted herein; or
26 f) fact witnesses providing testimony by deposition or at any court
27 proceeding in this case but only in accordance with the procedures set
28 forth in paragraph 8 of this Order.

1 9. The Recipient of Confidential Information shall disclose such
2 information to persons set forth in paragraphs 8(a) or 8(f), of this Order only under
3 the conditions set forth below:

4 a) Prior to disclosure of Confidential Information to persons described in
5 paragraphs 8(a) or 8(f), the Recipient shall advise that person that,
6 pursuant to this Order, he or she may not divulge such information to
7 any other individual.

8 b) Any person who receives Confidential Information pursuant to
9 paragraphs 8(a) or 8(f), shall execute an Agreement in the form
10 annexed hereto as Exhibit A. Each original, executed Agreement shall
11 be maintained in the files of the Recipient and shall be available for
12 review by all counsel and the Parties upon reasonable notice.

13 c) The Recipient who discloses Confidential Information pursuant to
14 paragraphs 8(a) or 8(f), shall maintain a list specifically identifying the
15 persons to whom the information was disclosed and the Bates number
16 and/or other means sufficient to identify such information disclosed.

17 10. Any use of Confidential Information at trial or other court hearings or
18 proceedings shall be governed by the orders of the trial judge. This Order does not
19 govern the use of Confidential Information at trial or other court hearings or
20 proceedings.

21 11. In the event the Recipient disputes the Producing Party's designation of
22 individual documents or a category of documents or information as Confidential
23 Information, the Recipient shall notify the Producing Party in writing of such
24 dispute. In an effort to settle such dispute without judicial intervention, the Parties
25 shall meet and confer, pursuant to Civil Local Rule 37-1, to determine whether the
26 restrictions imposed by this Order are warranted with respect to such disputed
27 information. If resolution of the dispute cannot be reached, the Parties shall
28 formulate a written Joint Stipulation pursuant to Civil Local Rule 37-2 et seq. The

1 Joint Stipulation shall be filed and served with a Notice of Motion. In connection
2 with such a motion, the Producing Party shall bear the burden to show that the
3 information is entitled to continued protection under applicable law. During the
4 pendency of such dispute or motion, and until the court may rule otherwise, the
5 information designated Confidential Information shall remain subject to the
6 designations and restrictions of this Order.

7 12. Inadvertent failure to designate Confidential Information shall not be
8 construed as a waiver, in whole or in part, and may be corrected by the Producing
9 Party by written notification to the Recipient promptly upon discovery of the failure
10 to designate.

11 13. All information obtained by a Recipient in discovery in this litigation,
12 regardless of whether it is Confidential Information, shall be used by the Recipient
13 solely for the prosecution or defense of the claims in this litigation, and shall not be
14 used by the Recipient in any other legal action, or for any business, commercial,
15 competitive, personal, publicity, media or other purpose, except: purpose, except:

- 16 a) Nothing herein shall preclude Home Depot (or a subsidiary of it) from
17 pursuing legal or other business action in discovered instances of
18 misconduct as to its own employees or ensuring that its employees are
19 acting in accordance with the law.
- 20 b) Nothing herein shall be construed as authorizing or encouraging a party
21 to disobey a lawful subpoena or court order issued in another action.
- 22 c) Nothing herein shall preclude a judge of any other proceeding from
23 making orders governing the use of such information in a hearing or
24 proceeding over which the judge presides.

25 No Recipient or other person to whom Confidential Information is disclosed
26 shall copy, transcribe, or otherwise reproduce in written or any other form any part
27 or portion of any Confidential Information except as necessary for purposes of the
28 litigation.

1 14. Within fifteen (15) business days after the conclusion of this litigation,
2 by adjudication (including appeals) or otherwise, the Recipient shall return to the
3 Producing Party all Confidential Information, all copies of such information, and
4 any Documents incorporating such information. Alternatively, at the request of the
5 Producing Party, the Recipient shall destroy all such materials and certify in writing
6 that all such materials have been destroyed.

7 15. Confidential Information may only be filed under seal pursuant to a
8 court order authorizing the sealing of the specific Confidential Information at issue.
9 A party that seeks to file under seal any Confidential Information must comply with
10 Civil Local Rule 79-5. Confidential Information may only be filed under seal
11 pursuant to a court order authorizing the sealing of the specific Confidential
12 Information at issue. If a party's request to file Confidential Information under seal is
13 denied by the court, then the Recipient may file the information in the public record
14 unless otherwise instructed by the court.

15 16. Prior to filing any Confidential Information, and any pleadings,
16 motions, or other papers filed containing such information with the Court, the party
17 shall present a written application and a proposed order to the judge, along with the
18 documents submitted for filing under seal. Where possible, the Parties should seek
19 to file with the Court under seal only the portions of filings containing Confidential
20 Information.

21 17. The restrictions set forth in this Order shall not apply to:
22 a) information that was, is or becomes public knowledge through its
23 authorized release by a person or entity who rightfully obtained and
24 possesses such information during the normal course of business, and
25 not in violation of this Order;
26 b) Home Depot (or its subsidiaries), with respect to its own information or
27 information received or created during the normal course of its own
28 business; or

1 c) the Court and court personnel, who are subject only to the Court's
2 internal procedures regarding the handling of material filed or lodged,
3 including material filed or lodged under seal.

4 Whether information that becomes a matter of public record in any other
5 manner may still be subject to protection as confidential shall be determined
6 according to the standards and procedures set forth in paragraphs 2 through 12 of
7 this Order. The owner of Confidential Information shall be able to seek protection of
8 that information in accordance with paragraph 6 of this Order even if it did not
9 produce that information in discovery.

10 18. Nothing in this Order shall be deemed to be a limit or waiver of the
11 attorney-client privilege, the work product privilege, or any other relevant privilege.
12 Further, inadvertent production of privileged information shall not waive the
13 privilege. If privileged information is inadvertently produced, the Recipient agrees
14 that, upon request from the Producing Party, it shall promptly return all copies of
15 Documents containing the privileged information, delete any versions of the
16 Documents containing the privileged information on any database or computer filing
17 system it maintains, and make no use of the privileged information.

18 19. Nothing in this Order shall prohibit any party from objecting to the
19 production or disclosure of Confidential Information solely on the grounds that such
20 information is confidential or sensitive, or on any other grounds. Furthermore,
21 nothing in this Order shall preclude the Parties from objecting to the admissibility or
22 use of Confidential Information.

23 20. In the event plaintiffs or their counsel obtain information of Home
24 Depot's (or its subsidiaries) from a third party that Home Depot believes is
25 confidential, Home Depot may designate such information Confidential Information
26 pursuant to this Order and it shall be treated as such in accordance with this Order.

27 21. If a Recipient discloses Confidential Information in a manner not
28 authorized herein, the Recipient must immediately and in writing notify the

1 Producing Party of all pertinent facts relating to such disclosure and, without
2 prejudice to other rights and remedies of the Producing Party, make every effort to
3 prevent further disclosure by the Recipient or by the person to whom the Recipient
4 disclosed such information.

5 22. The Court shall retain jurisdiction, both before and after the entry of
6 final judgment in this case, whether by settlement or adjudication, to construe,
7 enforce, and amend the provisions of this Order.

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9
10 Hon. Kenly Kiya Kato
United States Magistrate Judge

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12 Dated: August 13, 2015
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EXHIBIT A

**AGREEMENT CONCERNING INFORMATION COVERED BY A
PROTECTIVE ORDER ENTERED IN UNITED STATES
DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA –
EASTERN DIVISION**

The undersigned hereby acknowledges that he/she has read the Confidentiality Protective Order (“Order”) in *Bardwell v. Home Depot U.S.A., Inc., et al.*, Case No. 5:15-cv-01201-GHK(KKx), and understands its terms, agrees to be bound by each of those terms, and agrees to subject himself/herself personally to the jurisdiction of the United States District Court, Central District of California – Eastern Division, for the purpose of enforcing its terms. Specifically, and without limitation upon such terms, the undersigned agrees not to use or disclose any Confidential Information made available to him/her other than in accordance with the Order.

DATED: _____

BY: (Sign) _____

(Print) _____

(Name of Employer) _____